IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

Crl.MC.No. 375 of 2007()

AGAINST THE ORDERIN CMP.3776/2006 IN
CC.447/2003 of JUDL.MAGISTRATE OF FIRST CLASS, VADAKARA

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PETITIONER/ACCUSED:

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1. PARAMBATH BABU, S/O. POKKAN
   KUMMANKODE, NADAPURAM AMSOM.

2. BALAN, S/O. POKKINAN
   KOYILOTH HOUSE, KUMMANKODE.

3. GIREESH, S/O. POKKAN
   VARIKKOLI, NADAPURAM AMSOM.

4. PRADEEPAN, S/O. KANNAN,
   KUMMANKODE, NADAPURAM.

5. RAJESH, S/O. KUMARAN
   KUMMANKODE, NADAPURAM AMSOM.

BY ADV. SRI.C.R.SIVAKUMAR
SMT.G.VIDYA

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REP. BY SUB INSPECTOR
OF POLICE, STATION HOUSE OFFICER
VATAKARA POLICE STATION, BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 14/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 375 of 2007

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Dated this the 14th day of February, 2007

O R D E R

The petitioners are accused in a prosecution initiated, inter alia, under Sections 452, 354 and 392 r/w. 34 I.P.C. Cognizance has been taken on the basis of a final report submitted by the police. Trial had commenced and all the cited witnesses were examined. At that stage, it would appear, that the Investigating Officer realised that certain witnesses had not been cited in the final report and certain documents have not been produced. He therefore filed an application, Annex.2, to permit him to conduct further investigation to cure those defects.

2. The application was opposed and Annex.3 counter statement was filed. It is thereupon that the learned Magistrate passed Annex.4 order. By Annex.4 order the prayer for further investigation was allowed and the Investigating Officer was directed

> "to conduct the further investigation for the purpose of incorporating the name of the person who had conducted preliminary investigation and such other incidental witnesses relating to the issuance of ownership

> certificate connecting the place of incident and file final report on or before 21.12.2006".

That order, which was passed on 21.11.2006, was not promptly challenged. Further investigation was conducted by the Investigating Officer in terms of Annex.4 order and a further report in the form of a final report was filed by the Investigating Officer, wherein he cited the Sub Inspector, who had conducted the initial investigation, as Witness No.9 and the officer, who had conducted the further investigation, as Witness No.13. Witnesses 10 to 12 are cited to explain and prove the ownership certificate which has been produced.

3. The petitioner claims to be aggrieved by the order. What is the grievance? The learned counsel for the petitioner submits that belated further investigation ought not to have been permitted. She further complains that Annex.5 further report filed by the Investigating Officer is filed in the form of another final report. This is incorrect, it is urged.

4. I have considered the contentions carefully. I must alertly note the nature and quality of the jurisdiction which I am called upon to exercise. Under Section 482 Cr.P.C. the jurisdiction can be invoked if there is failure or miscarriage of justice. I totally agree with the learned

counsel for the petitioner that it would have been sufficient to permit the examination of these witnesses by invoking the powers under Section 311 Cr.P.C. But the fact that a circuitous route has been chosen of further investigation and filing of further report does not appeal to me as sufficient to invoke the powers under Section 482 Cr.P.C. The directions in Annex.4 order could have been complied with even without such further investigation. The requisite further evidence could have been sought to be introduced under Section 311 Cr.P.C. At any rate, I am not satisfied that the further report under Section 173(8) Cr.P.C. filed in the form of a further final report warrants any interference by invoking the powers under Section 482 Cr.P.C.

5. This Crl.M.C. is hence dismissed.

(R. BASANT)
Judge

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